

## § 18.10

## 38 CFR Ch. I (7–1–03 Edition)

or of the Department of Veterans Affairs requires that another place be selected. Hearings shall be held before the responsible agency official or, at the official's discretion, before an administrative law judge appointed in accordance with section 3105 of Title 5, U.S.C., or detailed under section 3344 of Title 5, U.S.C.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Department of Veterans Affairs shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing decision and any administrative review thereof shall be conducted in conformity with the procedures contained in 5 U.S.C. 554–557 (sections 5–8 of the Administrative Procedure Act) and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department of Veterans Affairs and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Secretary may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 18.10.

[29 FR 19301, Dec. 28, 1964, as amended at 38 FR 17966, July 5, 1973. Designated subpart A at 45 FR 63268, Sept. 24, 1980 and amended at 51 FR 10384, Mar. 26, 1986]

### § 18.10 Decisions and notices.

(a) *Procedure on decisions by an administrative law judge.* If the hearing is held by an administrative law judge such administrative law judge shall either make an initial decision, if so authorized, or certify the entire record including recommended findings and proposed decision to the responsible agency official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the administrative law judge the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the responsible agency official exceptions to the initial decision with reasons therefor. In the absence of exceptions, the responsible agency official may within 45 days after the initial decision serve on the applicant or recipient a notice that the decision will be reviewed. Upon the filing of such exceptions or of such notice of review the responsible agency official shall review the initial decision and issue a decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible agency official.

(b) *Decisions on record or review by the responsible agency official.* Whenever a

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record is certified to the responsible agency official for decision or the official reviews the decision of an administrative law judge pursuant to paragraph (a) of this section, or whenever the responsible agency official conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with the official briefs or other written statements of its contentions, and a written copy of the final decision of the responsible agency official shall be sent to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 18.9(a) a decision shall be made by the responsible agency official on the record and a written copy of such decision shall be sent to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of an administrative law judge or responsible agency official shall set forth a ruling on each finding, conclusion, or exception presented, and shall identify the requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Secretary.* Any final decision by an administrative law judge which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part of the Act, shall promptly be transmitted to the Secretary personally, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part,

or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the responsible agency official that it will fully comply with this part.

(g) *Post termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this section and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible agency official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the responsible agency official determines that those requirements have been satisfied, the official shall restore such eligibility.

(3) If the responsible agency official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible agency official. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

[29 FR 19301, Dec. 31, 1964, as amended at 38 FR 17966, July 5, 1973. Designated subpart A at 45 FR 63268, Sept. 24, 1980, and amended at 51 FR 10384, Mar. 26, 1986]

### § 18.11 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

[29 FR 19301, Dec. 31, 1964. Designated subpart A at 45 FR 63268, Sept. 24, 1980]